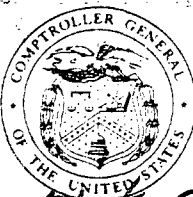


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## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*[Protest Alleging That Solicitation Specifications Were*

FILE: B-202834

DATE: May 14, 1981

*Ambiguous J*

MATTER OF: International Business Investments

*DLG06152*

## DIGEST:

1. When prior to bid opening bidder protests alleged improprieties in solicitation to agency, telephone call and confirming letter from agency denying allegations constitutes initial adverse agency action and protest relating to such alleged improprieties filed more than 10 working days thereafter is untimely.
2. Bidder which alleges it received information not made available to other bidders without insisting amendment be issued to solicitation thereafter cannot complain it was prejudiced.

International Business Investments (IBI) protests the award of a contract under invitation for bids (IFB) 273-B1-B-0009 issued by the National Institute of Environmental Health Services for guard services at Research Triangle Park, North Carolina. Essentially, IBI protests that the specifications in the solicitation were ambiguous and that it was prejudiced because the contracting agency provided it with information concerning the specifications that it failed to convey to other bidders. *AGCOOK*

IBI initially filed a protest with the contracting agency on March 9, 1981 complaining that the specifications were ambiguous and unclear in several respects. The agency answered the protest by a telephone conversation on March 18 and by a letter which IBI received on March 21. The agency's reply indicated its belief that

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the specifications were not ambiguous and referred IBI to appropriate provisions of the IFB for clarification. IBI was not satisfied with the agency response and repeated its allegations in a second letter to the agency dated March 25. The latter letter acknowledged the contracting officer's intent to proceed to bid opening on schedule. Bids were opened on April 7 and this protest was filed with our Office on April 13.

Our Bid Protest Procedures provide that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed before bids are opened. 4 C.F.R. § 20.2(b)(1) (1980). A protester may initially file such a protest with the contracting agency, but any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of initial adverse action in order to be considered. 4 C.F.R. § 20.2(a). "Adverse agency action" is defined to include any action or inaction taken on the part of a contracting agency which is prejudicial to the position taken in a protest filed with an agency. Electro-Magnetic Refinishers, Inc., B-191240, March 3, 1978, 78-1 CPD 168.

The alleged ambiguities in the solicitation specifications were apparent prior to bid opening. IBI filed a protest with the agency prior to bid opening as required, but it failed to file its subsequent protest with our Office within 10 working days from notification of the agency's initial adverse action. The telephone conversation of March 18 and the confirming letter IBI received on March 21 in which the agency denied IBI's allegations of ambiguous specifications constituted initial adverse agency action. IBI, however, did not file its protest with our Office until April 13, more than 10 working days later, thereby rendering the protest here untimely. See Leo Journagan Construction Co., Inc., B-192644, January 29, 1979, 79-1 CPD 59.

With respect to the "privileged" information IBI alleges it received, we point out that the agency's written reply to the March 9 protest referred IBI to specific portions of the IFB as an answer and thus did not suggest that other information was conveyed to IBI which was not available to the other bidders. In any event, even if we assume the validity of IBI's complaint in this respect, we point out that IBI initially received this information without complaint and

did not insist that an amendment be issued to the IFB for the benefit of all bidders. IBI is therefore in no position now to insist that it was prejudiced by the receipt of that information so long as other bidders proceeded to formulate their bids on the basis of the published information. Cf. Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD 427, aff'd on reconsideration, August 15, 1977 (where we denied a protester's complaint that its proposal was not evaluated in accordance with an evaluation formula which was not published in the solicitation but which it alleges it received prior to the time set for receipt of proposals).

The protest is summarily denied in part and dismissed in part.



Acting Comptroller General  
of the United States